



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/161972

PRELIMINARY RECITALS

Pursuant to a petition filed November 17, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a telephonic hearing was held on December 04, 2014.

The issue for determination is whether petitioner's appeal was timely filed for April 2014 FS and whether the agency determined petitioner's FS correctly effective September - December 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

█
█

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Simone Johnson, IM Spec. Adv.
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County and has been receiving FS since at least September 2013.
2. On March 10, 2014, the county agency sent a written notice of negative action to the petitioner.

3. The petitioner filed a hearing request that was received by the Division of Hearings and Appeals on November 17, 2014.
4. The negative action in this case was reduction of FS.

DISCUSSION

1. Whether petitioner's appeal of her FS reduction effective April 1, 2014 is timely.

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action concerning FS must be filed within 90 days of the date of that action. 7 C.F.R., § 273.15(g). A negative action can be the denial of an application or the reduction or termination of an ongoing case. The petitioner's appeal was filed 252 days after the date of the action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case.

Despite the untimeliness of the appeal for April's reduction, I provide the following information for the petitioner so that she might understand what happened with her FS over the following months, some of which I do have jurisdiction to review.

In determining the amount of FS to be issued each month, the county must budget all income of the FS household, including all earned and unearned income. 7 C.F.R. § 273.9(b). From the gross household income, the following permissible deductions as discussed in the *FoodShare Handbook*, §4.6.1 are allowed: a standard deduction, an earned income deduction, a medical expenses deduction, a child support payment deduction, a dependent care expense deduction, and a shelter expense deduction. Some FS groups are not allowed a deduction for some expenses and some expenses are not always deducted in full. The *FS Handbook* can be viewed online at <http://www.emhandbooks.wi.gov/fsh/>.

In this case, the agency explained that it had determined that there had been errors in petitioner's FS case going back to September 2013. This was a result of two things: 1) petitioner's SSI-E had been incorrectly budgeted in her income and 2) her rent amount had been incorrectly budgeted. The agency presented budgets for petitioner's FS from September 2013-December 2014. It showed how it had incorrectly budgeted her FS during that time due to those errors. This resulted in some months where petitioner received more FS than she should have, and some months where she received less. The end result was that petitioner ended up receiving more FS than she should have and therefore the agency was seeking an overpayment for that. This overpayment was noticed to the petitioner on November 21, 2014 and gave petitioner appeal rights if she chooses to exercise them. I have reviewed the budget information and find no errors now that the agency is using the correct information. Petitioner was unable to provide any information as to what she disputed about the budgeting and her allotments. As such, there is no information to show that the agency's determinations are incorrect. As an aside, petitioner may wish to consider getting an authorized representative to help her navigate the FS process.

CONCLUSIONS OF LAW

1. There is no jurisdiction as the appeal is untimely for the April 2014 FS reduction.
2. The agency determined petitioner's FS correctly effective September - December 2014.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 9th day of January, 2015

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 9, 2015.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability